

REMARKS/ARGUMENTS

Claims 17-20 and 29-50 are pending in this application. Claims 1-16 and 21-28 have been previously canceled. Claims 29-50 have been withdrawn from further consideration as a result of the Examiner's earlier restriction requirement and Applicant retains the right to present claims 29-50 in a one or more future applications.

Claim 17 has been amended to claim a tumor cell composition consisting essentially of a tumor cell modified to express a B7-2 protein and at least one additional immune modulator. Language directed to functional fragments has been removed. No new matter has been introduced as a result of the claim amendments.

By the amendments, Applicants do not acquiesce to the propriety of any of the Examiner's rejections and do not disclaim any subject matter to which Applicants are entitled. *Cf. Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997).

35 U.S.C. §112 Rejections

Claims 17-20 have been rejected under 35 USC §112, first paragraph, as failing to comply with the written description requirement. Applicants have amended claim 17 to remove the language regarding function fragments. In light of the amendments to claim 17, Applicants respectfully request the withdrawal of the 35 USC §112, first paragraph rejections of claims 17-20.

35 U.S.C. §102 Rejections

Claims 17-20 have been rejected under 35 USC §102(e) as being anticipated by U.S. Patent No. 6,548,068 to Schlam et al. (hereinafter "Schlam"). Applicant respectfully traverses.

A claim is anticipated under 35 U.S.C. §102 only if each and every element as set forth in a claim is found, either expressly or inherently described, in a single prior art reference (MPEP §2131; *Verdegaal Bros. V. Union Oil Co. of California*, 814 F.2d, 628, 631, 2 USPQ2d 1051 (Fed. Cir. 1987)).

Schlom discloses recombinant viruses and host cells infected with the recombinant viruses wherein the virus, or the host cell injected with more than one virus, express at least a tumor associated antigen and an immunostimulatory molecule. Schlom does not disclose a tumor cell composition consisting essentially of a tumor cell modified to express B7.2 and at least one additional immune modulator. The compositions disclosed by Schlom all require expression of a tumor associated antigen.

As the Examiner is aware, "omission of an element and retention of its function is an indicia of unobviousness."(MPEP 2144.04 (II)(B)).

Therefore, because Schlom does not disclose each and every element of the pending claims, the pending claims are novel over Schlom. Applicants respectfully request that the rejection of claims 17-20 under 35 USC §102(e) be withdrawn.

Conclusion

For the foregoing reasons, Applicant believes all the pending claims are in condition for allowance and should be passed to issue and therefore Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-3207.

Respectfully submitted,

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